

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D. C. 20554

In the Matter of)	
Federal-State Joint Board on)	
Universal Service)	
)	
)	
United States Cellular Corporation,)	
North Carolina RSA #4, Inc.)	CC Docket No. 96-45
North Carolina RSA No. 6, Inc.)	(DA 04-3536)
USCOC North Carolina RSA #7, Inc.)	
North Carolina RSA #9, Inc.)	
Jacksonville Cellular Telephone Company)	
Wilmington Cellular Telephone Company)	
For Designation as an Eligible)	
Telecommunications Carrier)	
In the State of North Carolina)	

COMMENTS OF THE NORTH CAROLINA RURAL CARRIER GROUP

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Summary

This matter involves the petition of North Carolina RSA #4, Inc., North Carolina RSA No. 6, Inc., USCOC North Carolina RSA #7, Inc., North Carolina RSA #9, Inc., Jacksonville Cellular Telephone Company, and Wilmington Cellular Telephone Company (collectively “U. S. Cellular”) for designation as an eligible telecommunications carrier (“ETC”) throughout its licensed service areas in North Carolina, including rural areas served by the North Carolina Rural Carrier Group, for the purposes of receiving federal universal service support. In its Petition U.S. Cellular also requests that the Commission redefine certain service areas of the North Carolina Rural Carrier Group. The North Carolina Rural Carrier Group respectfully urges the Commission to deny U.S. Cellular’s Petition in light of the Commission’s Notice of Proposed Rulemaking concerning the Federal-State Joint Board on Universal Service Recommended Decision. Granting this designation prior to the Commission finalizing these potentially new standards will not serve the public interest and will not achieve the Joint Board’s intentions to have a “rigorous ETC designation process” and to “improve the long-term sustainability of the universal service fund, as only fully qualified carriers that are capable of, and committed to, providing universal service would be eligible to receive support.”¹

In addition, U. S. Cellular has failed to provide evidence in its petition that permits the Commission to conduct a fact-specific public interest examination. U. S. Cellular has the burden to provide this in its Petition and has elected not to provide detailed information regarding its universal service offering. Such detail is essential to

¹ Recommended Decision ¶¶ 2, 9.

determine whether universal service is affordable and consistent with Commission rules and policies regarding universal service.

U.S. Cellular's Petition also includes numerous errors and misrepresentations of facts as explained in more detail below. In its Petition, U.S. Cellular is seeking redefinition of the study areas of three single-exchange rural carriers and three multi-exchange rural carriers where U.S. Cellular is not licensed to provide service.

For these reasons, described in more detail below, the North Carolina Rural Carrier Group urges the Commission to deny U.S. Cellular's Petition. Absent denying the Petition, the North Carolina Rural Carrier Group recommends that the Commission delay action on U.S. Cellular's Petition until it issues its order on the Recommended Decision.

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COMMENTS OF THE NORTH CAROLINA RURAL CARRIER GROUP

In response to the Federal Communications Commission (“FCC” or “Commission”) Public Notice in the above captioned matter, the rural local exchange companies of Star Telephone Membership Corporation (“Star TMC”), Atlantic Telephone Membership Corporation (“Atlantic TMC”), Barnardsville Telephone Company (“Barnardsville”), Citizens Telephone Company (“Citizens”), Ellerbe Telephone Company, Inc. (“Ellerbe”), MebTel, Inc. (“MebTel”), Randolph Telephone Company (“Randolph”), Randolph Telephone Membership Corporation (“Randolph TMC”), Saluda Mountain Telephone Company (“Saluda Mountain”), Service Telephone Company (“Service”), and Tri-County Telephone Membership Corporation (“Tri-County TMC”), (collectively the “North Carolina Rural Carrier Group”) through their consultant

John Staurulakis, Inc. submit these comments.² This matter involves the petition of North Carolina RSA #4, Inc., North Carolina RSA No. 6, Inc., USCOC North Carolina RSA #7, Inc., North Carolina RSA #9, Inc., Jacksonville Cellular Telephone Company, and Wilmington Cellular Telephone Company (collectively “U. S. Cellular”) for designation as an eligible telecommunications carrier (“ETC”) throughout its licensed service areas in North Carolina for the purposes of receiving federal universal service support.³ In its Petition, U.S. Cellular also requests that the Commission redefine certain service areas of the members of the North Carolina Rural Carriers Group. The North Carolina Rural Carriers Group respectfully urges the Commission to deny U.S. Cellular’s Petition in light of the Commission’s June 8, 2004 Notice of Proposed Rulemaking concerning the Federal-State Joint Board on Universal Service Recommended Decision.⁴ Due to the issuance of a Notice of Proposed Rulemaking the Commission has notified all interested parties in this matter that changes to the Commission rules concerning ETC designation and the scope of federal universal service support are likely to occur. Granting designation prior to the Commission finalizing these potentially new standards will not serve the public interest.

In addition, U.S. Cellular has failed to provide evidence in its petition that permits the Commission to conduct a fact-specific public interest examination. U.S. Cellular has the burden to provide this in its Petition and has elected not to provide detailed

² Federal Communications Commission, Public Notice. Parties are invited to Comment on Petitions for Eligible Telecommunications Carrier Designation, DA 04-3536, CC Docket No. 96-45, November 9, 2004.

³ North Carolina RSA #4, Inc., North Carolina RSA No. 6, Inc., USCOC North Carolina RSA #7, Inc., North Carolina RSA #9, Inc., Jacksonville Cellular Telephone Company, and Wilmington Cellular Telephone Company, *In the Matter of Federal-State Joint Board on Universal Service*, Petition for Eligible Telecommunications Carrier, DA 04-3536, CC Docket No. 96-45, November 9, 2004. (“Petition”)

⁴ *In the Matter of Federal-State Joint Board on Universal Service*, Notice of Proposed Rulemaking, CC Docket No. 96-45, FCC 04-127, Tel. June 8, 2004. (“*Recommended Decision*”)

information regarding its universal service offering. Such detail is essential to determine whether universal service is affordable and consistent with Commission rules and policies regarding universal service. Moreover, the effects of the Commission's proposed rulemaking along with the granting of U.S. Cellular's Petition may cause significant harm to the respective abilities of the members of the North Carolina Rural Carrier Group to provide universal service. These considerations were not addressed by U.S. Cellular in its Petition.

U.S. Cellular's Petition also includes numerous errors and misrepresentations of facts as explained in more detail below. In its Petition, U.S. Cellular is seeking redefinition of the study areas of three single-exchange rural carriers and three multi-exchange rural carriers where U.S. Cellular is not licensed to provide service.

For these reasons, described in more detail following, the North Carolina Rural Carrier Group urges the Commission to deny U.S. Cellular's Petition.

1. The Commission should deny or table U.S. Cellular's Petition in light of its release of a Notice of Proposed Rulemaking on ETC designations and Universal Service Support distribution.

On June 8, 2004 the Commission released its Notice of Proposed Rulemaking.⁵ In its Recommended Decision, the Federal-State Joint Board on Universal Service recommended several items that if accepted will modify the ETC designation process at the Commission and change the method of federal universal service support distribution. In sum, these recommendations now before the Commission may significantly alter the ETC landscape. The North Carolina Rural Carrier Group respectfully recommends that

⁵ *Id.*

the Commission defer any decision on this and any other such petitions currently pending until the Commission issues its order on the Recommended Decision. This will allow the Commission to consider the ramifications of U.S. Cellular's Petition in the context of the forthcoming rule changes and to ensure that measures adopted are able to accomplish the goal of improving the financial viability of the Universal Service Fund in the future.

The North Carolina Rural Carrier Group has cause to be concerned that granting U.S. Cellular's Petition prematurely will create a situation where U.S. Cellular may claim to be grandfathered under the old ETC designation provisions set forth in the *Virginia Cellular* decision in the hopes of retaining ETC status even if the Commission adopts new guidelines that U.S. Cellular may not be able to meet. This rush to obtain ETC designation before an appropriate framework is established to evaluate fully the overall impact of such designations on the Universal Service Fund and on consumers in rural service areas is not in the public interest. Designating Competitive ETCs under the existing framework will only make resolving current issues much more complex and difficult, undermining the progress made in establishing an appropriate framework.

It is undeniable that the Joint Board's Recommended Decision has significant and far-reaching implications regarding the designation of ETCs by the Commission and the distribution and capping of federal universal service support. To grant U.S. Cellular's Petition prior to a forthcoming order on matters for which parties have been notified through the Notice of Proposed Rulemaking may affect the respective abilities of the North Carolina Rural Carrier Group to continue to provide universal service at affordable rates.⁶

⁶ One example of this effect is the cap of federal universal service support on a primary line basis when a CETC is designated. In addition to its primary line recommendation, the Joint Board also

Since the Notice of Proposed Rulemaking has been issued, the landscape has changed. The Commission is now in a better position to consider various issues from the comments filed as requested in the Notice.

2. The Commission should deny U.S. Cellular’s Petition because U.S. Cellular has failed to provide evidence in its Petition that permits the Commission to conduct a fact-specific public interest examination.

Throughout U.S. Cellular’s discussion of the public interest lie several factual misstatements and inaccuracies. For instance, U.S. Cellular claims that ETC designation will “facilitate the provision of advanced communications services to the residents of rural North Carolina.”⁷ U.S. Cellular alleges that residents of rural telephone service areas have “long trailed urban areas” in receiving advanced telecommunications services.⁸ U.S. Cellular provides no facts supporting this assertion. However, several industry reports show exactly the opposite conclusion – rural independent customers receive advanced telecommunications services and innovative services at timelines that far exceed urban areas.⁹ It is questionable what additional benefits U.S. Cellular will bring to these rural areas that will outweigh the burden that will be placed on the Universal Service Fund.

recommends “high-cost support in areas served by rural carriers be capped on a primary-line basis when a competitive ETC is present or when a competitive ETC enters the market and be adjusted annually by an index factor.” See Recommended Decision at 108. This recommendation would decouple the North Carolina Rural Group’s federal universal service support from actual cost of providing universal service. This prospect would affect the North Carolina Rural Group’s ability to commit to continued infrastructure investment under current arrangements.

⁷ Petition at ¶ 28.

⁸ *Id.*

⁹ See *e.g.*, NTCA 2003 Broadband Survey Report, available at www.NTCA.org; OPASTCO 2004 Advanced Services Survey, May 10, 2004 Press Release available at www.OPASTCO.org.

For example, Star TMC, Atlantic TMC, and Randolph currently have advanced services available in 100% of their service territories. Citizens has achieved 95% availability of advanced services with plans well under way to achieve 100% availability in less than a year. Randolph TMC has advanced services available in 97% of its service territory, Mebtel in 99%, and Tri-County TMC in 95%.

U.S. Cellular claims service quality and customer service could improve if it is designated as an ETC for its service area in North Carolina.¹⁰ Here again, U.S. Cellular provides no facts supporting its allegation that service quality of the members of the North Carolina Rural Carrier Group is degraded in any way with respect to the reliability standards that are wireline industry norms.

U.S. Cellular states upon designation as an ETC, it “will make available to consumers a universal service offering over its cellular network infrastructure, using the same antenna, cell-site, tower, trunking, mobile switching, and interconnection facilities used by the company to serve its existing conventional mobile cellular service customers. As required by law, U.S. Cellular will provide service to any customer requesting service within the designated ETC service area upon reasonable request.”¹¹ U.S. Cellular chose not to provide this Commission with any information regarding its “universal service offering,” thus the Commission cannot determine with any particularity whether U.S. Cellular’s designation is consistent with Congressional principles, which require that quality services should be available at “affordable rates.”¹²

¹⁰ Petition at ¶ 36.

¹¹ Petition at ¶ 6.

¹² See 47 U.S.C. § 254(b)(1).

Moreover, U.S. Cellular did not provide any information on whether this universal service offering will require additional customer premises equipment that customers would need to purchase in addition to a basic monthly service charge.

U.S. Cellular speaks of offering service when it receives a reasonable request for service. However, it provides no details that define its understanding of a reasonable request. Without a clear understanding of the term “reasonable request,” the offer made by U.S. Cellular is empty and sterile. The North Carolina Rural Carrier Group recommends that the Commission define what it requires for reasonable request offerings.

U.S. Cellular seeks to be designated an ETC in order to receive support for its rural service areas in North Carolina. U.S. Cellular states that “[a]s U.S. Cellular constructs additional cell sites in high-cost areas to improve the quality of its radio frequency (“RF”) signal, its customers will have a greater choice among service providers and will receive more reliable service.”¹³ U.S. Cellular has not demonstrated a firm, comprehensive build-out schedule for the rural service areas for which it seeks ETC designation. If U.S. Cellular believes that it can receive federal support for a specific rural service area in North Carolina – one of the North Carolina Rural Carrier Group’s study areas – and use this support in another service area in North Carolina, the North Carolina Rural Carrier Group is concerned that U.S. Cellular would not be proposing to use federal support in the manner in which it was intended.¹⁴ No ETC should be allowed to receive support for one service area and use this support in another service area. The purpose of federal support is service-area-specific. All ETCs must use federal support in

¹³ Petition at ¶ 31.

¹⁴ See 47 CFR § 54.314.

the service area for which it receives the support. Otherwise, the competitive ETCs would be allowed to make a mockery of the federal and state certification process. This requirement is consistent with the process the Commission has for non-rural service areas. The Commission specifically targets wire-center service areas to receive support for services offered in those specific geographic areas.¹⁵ Any build-out by U.S. Cellular, assuming *arguendo* U.S. Cellular were designated an ETC in the respective rural service areas of the North Carolina Rural Carrier Group, should be targeted to specifically designated service areas. U.S. Cellular should not be permitted to take support from one service area and spend this support in another service area. U.S. Cellular's Petition does not commit to use any universal service funds in the North Carolina Rural Carrier Group's service areas. U.S. Cellular's proposal is contrary to the Commission's policy that funds be used in the service areas for which they are received. Further, U.S. Cellular's proposal is not in the public interest. To designate a carrier in a service area that does not propose to use federal support in that service area fails the most basic aspect of public interest – being of service to the designated public.

In light of this concern, the North Carolina Rural Carrier Group notes that U.S. Cellular has provided no firm build-out plan. The Petition does not meet the standard for build-out plans used by the Commission in the *Virginia Cellular* proceeding. The Commission stated its desire to weigh the benefit of a “competitive ETC’s ability to satisfy its obligation to serve the designated service areas within a reasonable time frame.”¹⁶

¹⁵ See 47 CFR § 54.309.

¹⁶ *In the Matter of Federal-State Joint Board on Universal Service*, Memorandum Opinion and Order, FCC 03-338, Rel. Jan. 24, 2004 at 28. (“Virginia Cellular”)

Upon review of U.S. Cellular's public interest discussion, the North Carolina Rural Carrier Group finds no discussion of the purpose of the public interest requirement. The North Carolina Rural Carrier Group believes it is important to observe that while seeking to promote competition in telecommunications services nationwide, Congress has determined that it may not be in the public interest to have more than one ETC designated in areas served by rural carriers. In order to designate a second ETC in these areas, Congress requires that an explicit determination be made by state commissions that a second ETC designation is in the public interest.¹⁷ The proposition that competition universally benefits all customers in all areas and thus all competitors should qualify for universal service support is not supported by congressional action, nor does the Joint Board recommend it. Congress passed several provisions in the Telecommunications Act of 1996 that identified the need to temper and in some instances forestall competition in areas served by rural carriers.¹⁸ These provisions were enacted because Congress knew that in certain instances the results of a competitive market could run contrary to the public interest. One reason why competition can be destructive rather than beneficial is due to the economic reality of large investments in plant and equipment for telecommunications service in sparsely populated areas. In these instances, the public interest has been best served by creating the largest critical mass of customers for one carrier; thereby creating the best economies of scale for rural areas. Pertaining to universal service support, Congress clearly prescribed a mechanism whereby competitive carriers must meet the public interest prior to receiving universal service support for their networks in areas served by rural telephone companies.

¹⁷ See 47 USC § 214(e)(2).

¹⁸ See § 214(e)(2) and (e)(6), § 251(f), and § 253(f).

Although the Joint Board in its Recommendation did not reach a conclusion about per-line support benchmarks for designating ETCs in high-cost areas, it did indicate that state commissions could consider per-line support levels when considering designating an additional ETC in a high-cost area. Per-line support benchmarks can be particularly useful to determine whether or not an area can support the entry of one or more competitive carriers. The Joint Board also suggested the Commission seek further comment on this matter, perhaps even establishing national per-line support benchmarks.¹⁹ It is better to resolve this question rather than continuing to designate ETCs that could later be found to undermine the public interest.

In light of the lack of specific information regarding U.S. Cellular's service plans, the incorrect facts upon which it relies, and its lack of consideration of the larger impact of granting ETC designations, the North Carolina Rural Carrier Group respectfully recommends that the Commission find that the public interest has not been satisfied by U.S. Cellular's Petition. In addition, there is no indication that U.S. Cellular is "prepared to serve all customers within a designated service area" and is "willing to be the sole ETC should other ETCs withdraw from the market"²⁰ as the Joint Board indicates in its Recommended Decision as considerations for developing appropriate guidelines.

3. Use of Universal Service Funds was never intended to create or to subsidize competition for competition's sake.

Competition is not always in the public interest, especially in instances where there is insufficient market demand for telecommunications services. In recent years, we

¹⁹ Recommended Decision ¶ 44.

²⁰ *Id.* ¶ 11.

have seen market failures in the most urban, low-cost areas – where economies of scale should have created a sustainable competitive environment. This problem is magnified in high-cost rural areas. It is prohibitively expensive to provide telecommunications services and market demand can sometimes barely support even one service provider.

Commissioner Kevin J. Martin stated it best:

I have some concerns with the Commission's policy. . .of using universal support as a means of creating "competition" in high cost areas. I am hesitant to subsidize multiple competitors to serve areas in which costs are prohibitively expensive for even one carrier. This policy may make it difficult for any one carrier to achieve the economies of scale necessary to serve all of the customers in a rural area, leading to inefficient and/or stranded investment and a ballooning universal service fund.²¹

It is important that the goals and the continued viability of the Universal Service Fund are not compromised under the guise of creating competition for competition's sake.

4. The Commission should deny U.S. Cellular's Petition because certain facts regarding Star TMC's study area are incorrect.

In Exhibit C of its Petition to the Commission, U.S. Cellular requests ETC designation throughout the study area of Star TMC. It is important to note that three of the wire centers listed as Star TMC wire centers are actually Carolina Telephone & Telegraph Company wire centers (Clarkton, Clinton and Garland). In addition, it appears that these three wire centers were included in U.S. Cellular's population density calculations for Star TMC. Inclusion of these areas dramatically inflates the average

²¹ *Multi-Association Group (MAG) Plan for Regulation of Interstate Services on Non-Price Cap Incumbent Local Exchange Carriers and Interexchange Carriers*, Second Report and Order and Further Notice of Proposed Rulemaking, CC Docket No. 0-256, Separate Statement of Commissioner Kevin J. Martin, 16 FCC Rcd 19613, 19770 (2001).

population density of Star TMC's service territory. Star TMC has been unable to recreate the results of U.S. Cellular's calculations because of insufficient information in its petition to the Commission.

Finally, Star TMC's South River wire center is located in Cumberland County, an area located outside U.S. Cellular's licensed service territory.²² U.S. Cellular's claim that it "has based its requested ETC area solely on its licensed exchanges"²³ and can provide service throughout Star TMC's service area is contrary to fact.

5. The Commission should deny U.S. Cellular's Petition to redesignate the study areas for Citizens, Ellerbe, MebTel, Randolph, and Randolph TMC because they are either wholly or partially located in areas outside U.S. Cellular's licensed service territory.

The study areas of Citizens, Ellerbe, and MebTel each consist of one wire center, Brevard in Transylvania County, Ellerbe in Richmond County, and Mebane in Alamance and part of Orange Counties respectively, all of which are outside U.S. Cellular's licensed service territory.

While these examples are sufficient reason alone to deny U.S. Cellular's Petition, it is worthwhile to point out that U.S. Cellular also petitioned for redesignation of the study areas for Citizens, Ellerbe, and MebTel. U.S. Cellular indicated in its petition that it could only partially provide service in each of the wire centers mentioned above. In the

²² Component parts of licensed service territories as posted on the FCC's website (<http://wireless.fcc.gov/services/cellular/data/marketareas.html>)

²³ See Petition at ¶ 59.

Highland Cellular Order, the FCC determined that “[a] rural telephone company’s wire center is an appropriate minimum geographic area for ETC designation.”²⁴

The study area of Randolph consists of one wire center (Liberty) located primarily in Randolph County, which is outside U.S. Cellular’s licensed service territory. U.S. Cellular’s claim that it can partially serve this wire center and requires redesignation should not be granted because as indicated above, the Commission has determined that the smallest geographic area to be used for consideration of ETC designation is a wire center. Two of the three Randolph TMC wire centers for which U.S. Cellular is requesting redesignation (Bennett and Coleridge) are not wholly located in U.S. Cellular’s licensed service territory. And once again as stated above, the Commission has determined that a wire center is the smallest geographic area to be used for consideration of ETC designation.

Conclusion

The North Carolina Rural Carrier Group has provided compelling reasons why U.S. Cellular’s Petition should be denied. Absent denying the Petition, the North Carolina Rural Carrier Group recommends that the Commission delay action on U.S. Cellular’s Petition until it issues its order on the Recommended Decision. This current rulemaking process will directly affect the North Carolina Rural Carrier Group when a second ETC has been or will be designated in their rural service areas.

²⁴ See *Highland Cellular Order*, 19 FCC Rcd at 6438, para. 33.

North Carolina Rural Carrier Group

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Atlantic Telephone Membership Corporation
Barnardsville Telephone Company
Citizens Telephone Company
Ellerbe Telephone Company, Inc.
MebTel, Inc.
Randolph Telephone Company
Randolph Telephone Membership Corporation
Saluda Mountain Telephone Company
Service Telephone Company
Tri-County Telephone Membership Corporation

Respectfully Submitted by their Consultants

November 23, 2004

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